

Excerpt from Manual 7, Section 3. Compliance

1. Introduction	It is your responsibility as the project sponsor to comply with the terms and conditions of the project agreement or agreements governing grant-in-aid funding assistance. After your project is complete (that is, after final reimbursement is made), IAC/SRFB expects that your project will continue to meet the terms and conditions of the project agreement.
2. Policy	<p>It is the policy of IAC/SRFB that interests in real property, structures, and facilities acquired, developed, enhanced, or restored with IAC/SRFB funds are not to be changed, either in part or in whole, nor converted to uses other than those for which the funds were originally approved. If an IAC/SRFB funded project is found to be changed or converted (out of compliance with the project agreement or agreement amendments), the project sponsor is responsible for replacing the changed or converted interests in real property, structures, or facilities with interests, structures, or facilities of equivalent size, value, and utility.</p> <p>IAC/SRFB recognizes a difference between projects that acquire interest in real property (land) and projects that fund structures or facilities. Post-completion compliance is generally not an issue for projects in which IAC/SRFB has provided funds for planning, maintenance, operation, education, and enforcement activities.</p> <ul style="list-style-type: none">• Public recreation land is expected to be available for public recreation purposes in perpetuity; that is, forever. Habitat land is expected to provide a habitat function in perpetuity.• A habitat function is a feature or characteristic that supports plants, animals, or fish in a natural ecosystem.<ul style="list-style-type: none">○ The loss of a species of interest, if as the result of events beyond the control of the sponsor, does not constitute a non-compliance issue if a <i>habitat function</i> remains.○ Loss of a species of interest as the result of events in the control of the sponsor, including sponsor inaction, may result in a non-compliance issue even if a habitat function remains.

	<ul style="list-style-type: none"> • Compliance with project agreements involving structures or facilities will be tied to a reasonable agreed-upon service life for the structure or facility, with the further provision that the development of the structure or facility constitutes the sponsor's agreement to provide recreational opportunity or habitat utility on the development site in perpetuity. <p>There are a number of ways a project can be out of compliance with a project agreement, the most serious of which is a conversion. If a compliance issue arises, IAC/SRFB works with sponsors to avoid, correct, or mitigate compliance issues, and uses the following definitions.</p>
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<p>3. Definitions</p>	<p><i>Non-compliance.</i> A project status that results when one or more elements of a completed project is found to be inconsistent with one or more elements of a project agreement. Non-compliance does not necessarily result in conversion.</p> <p><i>Conversion.</i> A project status that results when use or function of recreation or habitat land or facilities paid for by IAC/SRFB changes to uses or functions other than those for which assistance was originally approved.</p> <p><i>Obsolescence.</i> IAC/SRFB limits the application of “obsolescence” to built structures and facilities. “Obsolescence” is when one or more of the following applies: an IAC/SRFB funded structure or facility has become outmoded due to change in generally accepted professional design and construction practices that now renders the structure or facility out-of-date; significant, documented changes in prevailing outdoor recreation participation in the sponsor’s jurisdiction over a period of not less than ten (10) years; a structure reaches the end of its anticipated or agreed upon service life; or, in the instance of a structure placed or built for habitat purposes, to ecosystem changes beyond the control of the sponsor.</p> <p><i>Perpetuity.</i> Perpetual, seemingly ceaseless¹, or the condition of an estate that is limited so as to be inalienable either perpetually or longer than the period determined by law².</p>
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¹ Princeton University WordNet Internet site <http://wordnet.princeton.edu>

² Webster’s II New Riverside University Dictionary

<p>4. Compliance Inspections</p>	<p>IAC/SRFB staff is responsible for implementation of the compliance policy. IAC/SRFB has a policy to inspect completed projects to compare actual conditions to the terms and conditions of the project agreement. An inspection may be done at any time during the life of the project agreement. Inspection will result in a determination of compliance, non-compliance, or conversion.</p> <p>Sponsors are encouraged to regularly inspect their projects and to advise IAC/SRFB if potential compliance issues exist.</p>
<p>5. Non-compliance: Element Change</p>	<p>Non-compliance is when at least one element of a completed project does not meet the terms and conditions of the agreement. Element changes may be minor or major. In most cases, remediation will be required.</p> <ul style="list-style-type: none"> • Minor element changes are those that do not conform to the project agreement but with no negative effect on the recreational opportunity or habitat function for which the project was originally funded. <p>A project amendment will be required to account for the change, and <u>may</u> be subject to review by IAC/SRFB's Director or governing Board.</p> <ul style="list-style-type: none"> • Major element changes are those that do not conform to the project agreement and negatively affect, but do not eliminate, the recreational opportunity or habitat function for which the project was originally funded. <p>IAC/SRFB staff will work with the sponsor to find remedies for major element changes. A project amendment will be required to account for the change, and <u>will</u> be subject to review by IAC/SRFB's Director or governing Board.</p> <p>Under certain circumstances, an element change beyond the control of the sponsor may be deleted from a project agreement without triggering the replacement/reimbursement requirement. The conditions are:</p> <ol style="list-style-type: none"> 1. Obsolescence under the definition found in 3, above. 2. Extraordinary vandalism that renders the element useless

	<p>or dangerous</p> <p>3. Acts of nature including but not limited to floods, earthquake, volcanic eruption, forest fire, and adverse weather.</p> <p>4. Fire, whether criminal arson or accidental.</p> <p>5. Property or property rights lost as a result of a legal settlement or court decision.</p> <p>6. Permit requirements that disallow specified actions or elements.</p> <p>7. Interstate Commerce Commission National Trails System Act reversion order (National Trails System Act 8(d), 16 U.S.C. § 1247(d); WAC 286-27-060(2)).</p>
6. Resolution of Element Change	<p>As soon as the sponsor or IAC/SRFB staff identifies a non-compliance issue or element, steps shall be taken to begin approval for remediation of the issue or element. Usually, remediation will be documented in a revised grant agreement.</p> <p>The sponsor must:</p> <ol style="list-style-type: none"> 1. Arrange for a site visit with IAC/SRFB staff. 2. After initial contact and the site visit, prepare documentation to accompany a written request for IAC/SRFB approval of the project replacement or project change. Staff will work with the sponsor to determine the kind and amount of documentation necessary to support a revised grant agreement. <p>Documentation</p> <p>The sponsor may be required to provide the following, in writing:</p> <ol style="list-style-type: none"> 1. A description of the element change. 2. Justification for the element change, including evidence that all practical alternatives to the element change have been evaluated on a sound basis 3. A list and discussion of alternatives for replacement or remediation of the element change. 4. If a major element change has taken place, evidence that the public has been given a reasonable opportunity to participate in development of the request.

	<p>5. Additional documents that help explain the element change such as maps, plans, graphics, and/or photographs.</p>
<p>7. Non-compliance: Conversion</p>	<p>A conversion would be determined when one or more of the following has taken place, whether affecting an entire site or any portion of a site funded by IAC/SRFB:</p> <ul style="list-style-type: none"> • Property interests are conveyed for non-public outdoor recreation, habitat conservation, or salmon recovery uses; • Property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was derived.³ • Non-outdoor recreation, habitat conservation, or salmon recovery uses (public or private) are made in a manner that impairs the originally intended purposes of the project area; • Non-eligible indoor facilities are developed within the project area. • Public use of the property or a portion of the property acquired or developed/restored with IAC/SRFB assistance is terminated. • The property or a portion of the property acquired, restored, or enhanced no longer provides the environmental functions for which IAC/SRFB funds were originally approved. <p>Note: temporary closure of access sites due to budget reductions will not result in a conversion if the sponsor demonstrates that the closure will last one season or less.</p>
<p>8. Resolution of Conversion</p>	<p>As soon as the sponsor and/or the Office determines that a project change may constitute a conversion, the sponsor shall contact the Office to begin resolution of the conversion. The steps to take are listed below.</p> <ol style="list-style-type: none"> 1. Arrange for a site visit with your grant manager. 2. After initial contact and the site visit, prepare documentation to accompany a written request for

³ An exception is allowed under SRFB rules: property acquired for salmon recovery purposes may be transferred to federal agencies, provided the property retains adequate habitat protections, and with written approval.

	<p>IAC/SRFB approval of the project replacement or project change. The request, including a cover letter to the director, must contain a description of the original project, a description of the proposed change or conversion, and the proposed remediation.</p> <p>3. If the conversion is referred to IAC/SRFB, be prepared to attend the IAC/SRFB meeting at which the proposed conversion will be presented and decided.</p> <p>Documentation</p> <p>The sponsor must provide the following in writing:</p> <ol style="list-style-type: none"> 1. A description of the original project proposal funded by IAC/SRFB. 2. A description of the proposed conversion. 3. A list and discussion of alternatives for replacement or remediation of the conversion. All practical alternatives to the conversion must be evaluated on a sound basis. Also, evidence must be provided that the public has been given a reasonable opportunity to participate in the identification, development, and evaluation of alternatives 4. Justification that supports the replacement site as reasonably equivalent recreation or habitat utility and location. <p>The fair market value of the converted real property must be established and the property proposed for substitution must be of at least equal current fair market value. The fair market value must be established by appraisal as provided in Manual #3.</p> <p>Property improvements will be excluded from all fair market value consideration for interest in real property to be substituted. Exceptions may be considered only in those cases where interest in real property proposed for substitution contains improvements that directly enhance its outdoor recreation or habitat conservation utility.</p> <ol style="list-style-type: none"> 5. Additional documents for specific types of projects: <p><i>Acquisition:</i> copies of any appraisal or appraisal review of the proposed conversion.</p> <p><i>Development or restoration of structures of facilities:</i> a site plan that clearly indicates the development/restoration proposed for conversion.</p>
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	<p><i>For all projects:</i> submit maps, plans, graphics, a completed State Environmental Protection Act (SEPA) check list, archeological or cultural resource reviews, and other documents as requested by the Office.</p>
<p>9. Conversions of Land and Water Conservation Fund (LWCF) Projects</p>	<p>In addition to compliance with the rules found above, sponsors of facilities developed/restored with federal LWCF assistance must provide:</p> <ol style="list-style-type: none"> 1. An environmental assessment (EA). 2. Evidence of an appropriate review process. If the proposed conversion and substitution are significant, this includes a notice of intent that contains: <ul style="list-style-type: none"> • A detailed description of the proposal • An address where comments may be forwarded, and • The deadline for comment. <p>At least 30 days before the end of the comment period, the notice must be mailed to the State Historic Preservation Officer (SHPO) and all affected state, area, and regional agencies.</p> 3. Copies of all SHPO comments, even if "no comment" is indicated. <p>Director or IAC/SRFB approval of conversions under LWCF is interim, pending final approval from the National Park Service.</p>

<p>10. Review by the Director</p>	<p>Once all documents are received, staff will determine whether the proposal requires approval by the Director or by the IAC/SRFB using the following guidelines.</p> <p>1. The director may review the following conversion replacement requests:</p> <p style="padding-left: 40px;">Those in which conversion of use impacts less than 20 (twenty) percent of the original project scope <i>Or</i> Those in which conversion of use is less than 20 (twenty) percent of the total project cost within the original project agreement <i>Or</i> Those in which conversion of use is more than 20 (twenty) percent of the original scope or cost AND the dollar value of the conversion is \$100,000 or less.</p> <p>The director may choose one of three courses of action: approval of the request, denial of the request, or deferral of the decision to the IAC/SRFB.</p> <p>A sponsor may appeal a denial to the IAC/SRFB.</p> <p>2. All other requests are sent directly to IAC/SRFB as appropriate (see next section).</p>
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<p>11. Review by IAC/SRFB</p>	<p>IAC/SRFB meet in open public forums according to pre-published schedules. Review of a replacement/remediation proposal will be subject to a timetable based on the meeting schedule.</p> <p>A sponsor's request for IAC/SRFB review must be received at least six weeks prior to a scheduled meeting. Sponsors will be notified at least 30 days in advance of the open public IAC/SRFB meeting at which the proposal will be reviewed.</p> <p>IAC/SRFB staff will prepare a memorandum explaining the conversion and the proposed replacement/remediation. IAC/SRFB will review the request in an open public meeting. Upon examination of the available documentation, IAC/SRFB may approve or deny the request.</p> <p>If a project has been funded in part or whole through federal funds, the IAC/SRFB decision may be forwarded to the appropriate federal agency for further review. Federal law and regulations will apply.</p>
<p>12. Implementing IAC/SRFB approval</p>	<p>If approval is granted by the Director, or by the IAC/SRFB, staff will amend the appropriate project agreement(s) to reflect the change.</p>

<p>13. Unresolved Non-Compliance or Conversion Issues</p>	<p>The Director may recommend to IAC/SRFB that a sponsor with unresolved non-compliance or conversion projects be identified as a “high-risk” sponsor.</p> <p>A “high-risk” sponsor is one that has one or more unresolved conversions of which the combined grant dollar total exceeds \$1 million or 25% of all IAC/SRFB grants received by that sponsor, whichever dollar amount is less.</p> <p>The IAC/SRFB will consider the recommendation in an open public meeting. If the IAC/SRFB agrees to identify a sponsor as “high-risk,” the following policies will apply:</p> <ol style="list-style-type: none"> 1. The Director will notify a sponsor in writing that it has been identified as “high risk.” Notification will include specific project references and suggestions for remediation. 2. The “high risk” sponsor may still apply and compete for additional grants for one grant round or calendar year (whichever is longer). 3. If the sponsor’s new application is successful, the sponsor will be given a 90-day time period following the IAC/SRFB funding meeting to demonstrate substantial, if not complete, progress toward resolving any outstanding conversions. 4. If the sponsor has not demonstrated substantial progress or has not resolved outstanding conversions in that 90-day period, the new grant will be withdrawn and assigned to the next eligible project in the same grant program and category. 5. After the 90-day period, the “high risk” sponsor may not submit further applications until all outstanding conversions are resolved.
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